

Office of State Personnel Internal Policy

Employee Assistance Program – Program 3

Policy

The Office of State Personnel (OSP) provides an Employee Assistance Program (EAP) as a benefit to assist employees that may be experiencing personal problems. The EAP is an employer- sponsored program designed to assist agencies in addressing productivity issues by supporting employees in identifying and resolving personal problems that may adversely affect job performance or personal conduct.

The purpose of the EAP is to combine sound management principles with supportive intervention techniques to provide information and treatment opportunities for employees needing assistance. The program seeks to maintain and restore individual health and well being, improve productivity and retain valued and experienced employees.

Coverage

This benefit is provided to all OSP employees that are in either permanent, probationary, time-limited, or trainee appointments working at least 30 hours per week.

Family members of the above OSP employees residing in the home are covered and eligible to use the services of the EAP.

Program Access

The EAP is available 24 hours a day, seven days a week, to assist management and employees. The EAP can be reached at (704) 717-5295 or 1-888-298-3907.

Leave Time

An employee will not be charged leave time for the three EAP sessions for problem assessment and short-term counseling if the supervisor is notified of a scheduled appointment. If an employee prefers not to notify the supervisor of the EAP appointments, appropriate leave credits must be taken.

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In situations where the initial assessment reveals that an employee requires a referral for longer term treatment to a provider outside of the EAP prior to using the three sessions, the employee must use appropriate leave credits to attend any subsequent treatment that may be recommended.

Program Cost

There is no cost to the employee for the three sessions for problem assessment and short- term counseling services provided by the EAP. However, any cost associated with a referral to a treatment provider beyond the three sessions is the employee's responsibility.

In situations where all sessions are not utilized because an employee requires a referral for longer term treatment to a provider outside of EAP, the cost is the responsibility of the employee.

All cost associated with a fitness-for-duty/risk evaluation is the responsibility of OSP. The cost associated with any subsequent recommended treatment shall be the responsibility of the employee.

Confidentiality

OSP may disclose information regarding a situation concerning an employee and the workplace in the course of receiving a consultation or in making a referral. Federal and state law, along with professional ethics, requires that the EAP exercise the highest standards concerning client confidentiality. The EAP may only disclose client information to the employer with the written consent of the employee. The written consent will outline specific information that will be disclosed to management.

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Notwithstanding professional standards of confidentiality, federal and state law does require the disclosure of information in certain circumstances. These circumstances include the following situations:

- Threat of harm to self or others
- Knowledge of abuse or neglect of a child or elderly person
- When court ordered
- Medical necessity

Types of Referrals

The EAP recognizes four types of referrals:

- Self Referral
- Supervisory Referral
- Management Directed Referral
- Fitness-for-duty/Risk Evaluation

I. Self Referral

A self referral is a voluntary contact initiated by the employee to obtain confidential assistance for personal problems. The employee may contact the EAP directly and select a face-to-face or a telephone assessment. The EAP will not notify OSP of an employee's self referral.

Management should encourage the use of EAP if it has knowledge that the employee is experiencing personal or family problems. Using the EAP should be viewed as a responsible action and should be supported by management.

II. Supervisory Referral

The supervisory referral is designed to provide a management tool for addressing unsatisfactory job performance or unacceptable personal conduct. This referral may be

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used if disciplinary action is being considered by the supervisor and the referral is provided as an option to the employee.

If the employee accepts the EAP referral, the supervisor will contact the EAP before the appointment to provide background information, including the supervisor's concerns about any job performance or personal conduct issues.

Although the employee may decline the initial offer of EAP services, the offer can be repeated any time the supervisor feels the employee may have become more receptive. Unlike self referrals, which are strictly confidential between the employee and the EAP, with a supervisory referral, limited information can be released by the EAP to OSP only with the written consent of the employee. This information is limited to:

- Whether the employee kept the initial EAP appointment
- Whether the employee agreed to follow recommendations
- Whether the employee is continuing to comply with recommendations
- When there is closure of services

Disciplinary action may be taken for any subsequent job performance or personal conduct, regardless of the employee's active involvement in EAP. Depending upon the nature of the job performance or personal conduct issue, supervisors are encouraged to provide for a reasonable length of time after an initial referral before taking additional disciplinary action to provide the employee the opportunity to address concerns.

III. Management- Directed Referral

A management-directed referral may be used to address employee behavior that requires prompt or immediate attention and which may warrant dismissal. The purpose of the referral is to protect the workplace from disruption and to develop a plan of action

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to resolve the situation caused by the employee's behavior. As an example, this referral may be used when an employee has demonstrated:

- Erratic or unusual behavior that is disruptive to the workplace or may present a potential health/safety danger to self or others, or to state property
- Impairment on the job
- Positive alcohol or drug test

When considering a management-directed referral, management first must consult with the human resource office. Consultation with legal counsel is strongly recommended.

Management must present the employee with a choice between accepting EAP services or relying solely on the disciplinary process to resolve the matter.

When making a management-directed referral, management has an obligation to explain to the employee the options (for example, dismissal vs. EAP referral and compliance with recommendations) that are being considered in a manner that helps the employee understand what is expected and what disciplinary action will likely occur. Specifically, management must communicate in writing the following information to the employee:

- Specific reason(s) for the management-directed referral
- Management's expectations for compliance in resolving the concern(s)
- Possible consequences for the employee's failure to accept all conditions of the referral which include:
 - Compliance with the directive to accept a management-directed referral
 - Compliance and completion with any subsequent treatment recommendations, and
 - Make required corrections in job performance or personal conduct

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The employee has the right to accept or refuse the EAP services. Refusal by the employee to participate in EAP is not just cause for disciplinary action. Any disciplinary action that occurs after the refusal of the EAP services shall be based solely on the job performance or personal conduct issue that prompted the referral.

Even if the employee accepts a management-directed referral, management retains the right to issue a lesser form of disciplinary action for the job performance or personal conduct issue that prompted the referral. However, OSP may condition the issuance of the lesser disciplinary action upon successful compliance with the management-directed referral and completion of any recommended treatment. If the employee later fails to comply, OSP may revoke the lesser disciplinary action and issue an appropriate level of disciplinary action as if the EAP referral had not occurred.

If the employee accepts the offer of EAP services, the supervisor should contact the EAP in advance of the appointment to provide background information about the employee and details of the job performance or personal conduct that is of concern.

If treatment is indicated, the EAP will refer the employee to a treatment provider and monitor the employee's compliance with treatment recommendations and will maintain ongoing communication with OSP until closure.

Limited information from the management-directed referral will be released to OSP with the written consent of the employee. This information is limited to:

- Whether the employee kept initial EAP appointment
- Whether the employee agreed to follow recommendations
- Whether the employee is continuing to comply with recommendations
- When there is closure of services

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If, at any time, the employee refuses to sign a necessary consent for release of information or later revokes consent for release of information, or does not comply with treatment recommendations, OSP shall rely solely on the disciplinary process to resolve the job performance or personal conduct issue that originally prompted the referral.

Investigatory Leave with Pay for Management-Directed Referrals

Investigatory leave with pay shall be used initially when management determines that the employee should not remain on or return to the worksite. Management's decision must consider the best interests of OSP and the employee in deciding to use the investigatory leave with pay provisions. Investigatory leave with pay may be used in order to:

- Investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action
- Provide time to schedule and conduct a pre-disciplinary conference
- Avoid disruption of the workplace and to protect the safety of persons or property, or
- Facilitate a management-directed referral

Investigatory leave with pay shall end when EAP notifies OSP that recommendations for treatment have been made, or the results of an alcohol or drug test have been received and OSP makes a decision regarding the employee's status. If the employee is not able to return to the workplace when investigatory leave with pay ends, OSP shall advise the employee of leave options, which may include using appropriate leave credits (vacation or sick leave, family medical leave, voluntary shared leave, and short-term disability).

IV. Fitness-for-Duty/Risk Evaluation

A fitness-for-duty/risk evaluation may be used when an employee's behavior creates a reasonable belief that an employee poses an immediate hazard or risk to self or others,

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or to state property. It may also be used when there is a reasonable belief that an employee is not fit to perform the essential job functions due to a psychological or psychiatric condition.

When considering a fitness-for-duty/risk evaluation, management first must consult with the human resource office. Consultation with legal counsel is strongly recommended.

Management must present the employee with a choice between accepting EAP services or relying solely on the disciplinary process to resolve the matter.

When making a fitness-for-duty/risk evaluation referral, management has an obligation to explain to the employee the options (for example, dismissal vs. EAP referral and compliance with recommendations) that are being considered in a manner that helps the employee understand what is expected and what disciplinary action will likely occur. Specifically, management must communicate in writing the following information to the employee:

- Specific reason(s) for the fitness-for-duty/risk evaluation
- Management's expectations for compliance in resolving the concern(s)
- Possible consequences for the employee's failure to accept all conditions of the referral which include:
 - Compliance with the directive to undergo a fitness-for-duty/risk evaluation
 - Compliance and completion with any subsequent treatment recommendations or any other conditions of the evaluation, and
 - Make required corrections in job performance or personal conduct

The employee has the right to accept or refuse the EAP services. Refusal by the employee to participate in EAP is not just cause for disciplinary action. Any disciplinary

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action that occurs after the refusal of the EAP services shall be based solely on the job performance or personal conduct issue that prompted the referral.

Even if the employee accepts a fitness-for duty/risk evaluation referral, management retains the right to issue a lesser form of disciplinary action for the job performance or personal conduct issue that prompted the referral. However, OSP may condition the issuance of the lesser disciplinary action upon successful compliance with the management-directed referral and completion of any recommended treatment. If the employee later fails to comply, OSP may revoke the lesser disciplinary action and issue an appropriate level of disciplinary action as if the EAP referral had not occurred.

If the employee accepts the offer of EAP services, the following information must be provided to the EAP in advance of the referral:

- Precipitating event(s)
- Documented performance and/or behavioral concerns
- Pending or active disciplinary action
- Employee's job description or essential job functions

The EAP will facilitate the referral to a qualified resource to conduct the fitness-for-duty/risk evaluation. Unlike the management directed referral or the supervisory referral, management will receive an evaluative summary from the evaluating resource regarding the employee's fitness for duty. The evaluative summary will recommend one of the following courses of action:

- Fit to return to duty without specific recommendations. The evaluator has determined that the employee does not pose a hazard or others, or to state property and is fit for duty.

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- Fit to return to duty with specific recommendations. The evaluator has determined that the employee does not pose a hazard or risk to self or others, or to state property and is fit for duty. However, the evaluative findings recommend that the employee should undergo treatment as a condition of continued employment.
- Not fit to return to duty until specific recommendations have been met. The evaluator has determined that the employee may pose a hazard or risk to self or others, or to state property and is *not* fit-for-duty. Management shall consider the recommendations in the evaluative summary and shall state the terms and conditions that must be met before the employee shall be allowed to return to work.

In addition to receiving an evaluative summary from the resource conducting the fitness-for-duty/risk evaluation, if treatment is indicated, the EAP will provide the following services:

- Refer the employee to a treatment provider
- Monitor the employee's compliance with treatment recommendations, and
- Maintain ongoing communication with OSP until closure of services

If, at any time, the employee refuses to sign a necessary consent for release of information or later revokes consent for release of information, or does not comply with treatment recommendations, OSP shall rely solely on the disciplinary process to resolve the job performance or personal conduct issue that originally prompted the referral.

The cost of the fitness-for-duty/risk evaluation is the responsibility of OSP. OSP is considered the client; therefore, the evaluative summary will be provided directly to the human resources office. The cost associated with any subsequent recommended treatment shall be the responsibility of the employee.

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Investigatory Leave with Pay for Fitness-for-Duty/Risk Evaluations

Investigatory leave with pay shall be used initially when management determines that the employee should not remain on or return to the worksite. Management's decision must consider the best interests of OSP and the employee in deciding to use the investigatory leave with pay provisions. Investigatory leave with pay may be used in order to:

- Investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action
- Provide time to schedule and conduct a pre-disciplinary conference
- Avoid disruption of the workplace and to protect the safety of persons or property, or
- Facilitate a fitness-for-duty/risk evaluation

Investigatory leave with pay shall end when OSP receives the evaluative summary and makes a decision regarding the employee's status. If the employee is not able to return to the workplace when investigatory leave with pay ends, OSP shall advise the employee of leave options, which may include using appropriate leave credits (vacation or sick leave), family medical leave, voluntary shared leave, and short-term disability based on the conclusions, results and recommendations of the evaluative summary and the course of action recommended.

Employee/Employer Responsibilities

Employee Responsibilities

Employees are always responsible for performing assigned job duties satisfactorily, conducting themselves appropriately, and availing themselves of resources designed to facilitate the resolution of workplace concerns. Employees are encouraged to accept referrals to EAP to demonstrate their commitment to resolving personal or workplace

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problems that may have a negative impact on job performance or personal conduct that causes disruption in the workplace.

Management Responsibilities

Management has an affirmative duty to manage employee performance, conduct deficiencies and fitness-for-duty issues, and to use the disciplinary process when necessary and appropriate. Management, in consultation with human resources, shall utilize the services of EAP for consultation and refer employees for EAP services as appropriate.

OSP Responsibilities

As part of the development and support of EAP within the organization, OSP shall provide information to employees, supervisors and managers on the use of EAP services in compliance with this policy. OSP has designated an EAP coordinator who has primary responsibility for the administration and communication of EAP services.